MONTANA LEGISLATIVE HISTORY

Chapter 43 1981

Bill H _____ S 28 Original bill & history ___C

H. Committee on Local Govt.		S. Committee on Local Govt.	
Hearing Date(s) Mar 03	✓ C	Hearing Date(s) Jan 06	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

TRANSMITTED TO GOVERNOR: 3/25/81
ACTION: 3/30, SIGNED
CHAPTER 167

SB 27 — S. BROWN — AMENDING 7-32-2121 TO CHARGE SHERIFF WITH DUTY O
SUPERVISING SEARCH AND RESCUE.
PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80
HEARING: 1/8
REPORT: 1/8, DO PASS
PLACED ON CONSENT CALENDAR, DISCUSSION: 1/10
3RD READING: 1/12, YEAS: 46; NAYS: 2

TRANSMITTED TO HOUSE: 1/12
INTRODUCED: 1/13
REFERRED TO COMMITTEE ON JUDICIARY: 1/13
HEARING: 3/3
REPORT: 3/3, BE CONCURRED IN
2ND READING: 3/5, YEAS: 87; NAYS: 3
3RD READING: 3/7, YEAS: 87; NAYS: 7

RETURNED TO SENATE: 3/7
TRANSMITTED TO GOVERNOR: 3/9/81
ACTION: 3/12, SIGNED
CHAPTER 42

SB 28 — MAZUREK — TO REVISE THE PROCEDURE FOR DECLARING AN OFFIC
FORFEITED....
PREFILED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 12/30/
HEARING: 1/6
REPORT: 1/7, DO PASS
2ND READING: 1/9, YEAS: 44; NAYS: 3
3RD READING: 1/12, YEAS: 46; NAYS: 2

TRANSMITTED TO HOUSE: 1/12
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/13
HEARING: 3/3
REPORT: 3/4, BE CONCURRED IN
2ND READING: 3/5, YEAS: 95; NAYS: 4
3RD READING: 3/7, YEAS: 93; NAYS: 2

RETURNED TO SENATE: 3/7
TRANSMITTED TO GOVERNOR: 3/9
ACTION: 3/12, SIGNED
CHAPTER 43

SB 29 — HAGER — TO PROHIBIT PERSONS WHO ESTABLISH RESIDENCE N
AGRICULTURAL OR FARMING OPERATIONS, ETC., FROM BRINGING NUISA
SUITS....
PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80
HEARING: 2/12
REPORT: 2/16, DO PASS AS AMENDED
2ND READING: 2/18, DO PASS
3RD READING: 2/20, YEAS: 48; NAYS: 0

TRANSMITTED TO HOUSE: 2/20
REFERRED TO COMMITTEE ON JUDICIARY: 2/21
HEARING: 3/3
REPORT: 3/3, BE CONCURRED IN AS AMENDED
ON MOTION, 3/5, PASSED FOR THE DAY.
2ND READING: 3/6, YEAS: 74; NAYS: 15

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

January 6, 1981

The meeting of the Local Government Committee was called to order by Chairman, George McCallum, on January 6, 1981, at 1:00 p.m. in Room 405, State Capitol.

ROLL CALL: All members were present.

Several visitors were in attendance. (See Attachment.)

CONSIDERATION OF SENATE BILL NO. 28: Senator Mazurek of Senate District 16, sponsor of the bill, stated the bill was proposed by the Department of Community Affairs. It is basicall a housekeeping bill. Audits of local governments were transferr to the Department of Community Affairs in 1975. The law as currently written provides for forfeiture of office by public official upon filing of audit if audit shows cash shortage. In 1945 the Supreme Court ruled that the officer is entitled to a hearing prior to forfeiture of position. Therefore, they find the current statute, as presently written, to be unconstitutional They would like the Department of Community Affairs to be able to suspend the officer until a hearing, the date of which must be set within ten days after the department's finalized audit report.

Daniel Diemert, Department of Community Affairs, then testified in favor of the bill. Mr. Diemert stated a specific case, Ryan V. Norby, where the Supreme Court ruled the office holder was entitled to a hearing prior to forfeiture of his position. (See Attachment.)

Mike Stephen of the Montana Association of Counties concurre with the proposed bill.

Dan Mizner of the Montana League of Cities and Towns recommended the bill do pass.

There were no opponents of the bill present at the meeting.

A motion was made by Senator Story that the bill do pass. Senator Conover seconded the motion. The motion carried unanimously.

Senator McCallum stated future meetings would be held at 1:15 p.m.

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 1/6/81

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum	✓		
Senator Jesse O'Hara	✓		
Senator Pete Story	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas	✓		
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

DATE January 6, 1981

COMMITTEE ON LOCAL GOVERNMENT BILL NO. 28

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppos
DENNIS M. TAYLOR	CITY OF HELENA	NEITHER SB82	
DANIEL G. DIEMERT	DCA	X	
JOSEPH P. MAZUREK	SEN DIST 16 - SPONSOR	X	
Pete Phillay	Legislative Aide		
Mike Stephen	MACO	X	
Bryan Cottingham	Legislative Aide		
David G. Goss	Billings Chamber of Commerce		
Ken McMahon	Montana League of Cities & Towns	X	
Ken Hoovestol	MT. Marine Trade Assn		
Joan Hoovestol			

(Please leave prepared statement with Secretary)

NAME: DANIEL G DIEMERT DATE: 1/6/81

ADDRESS: 1424 9th Ave Helena

PHONE: 449-3494

REPRESENTING WHOM? DCA

APPEARING ON WHICH PROPOSAL: SB. 28

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Legislation is necessary to correct unconstitutional provision of law which provides for forfeiture of office by public official upon the mere filing of an audit report. The Montana Supreme Court held in Ryan v. Narby (118 M. 283) that the office holder is entitled to a hearing prior to such forfeiture.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

January 6 19 81

MR. President:

We, your committee on Local Government

having had under consideration Senate Bill No. 28

Respectfully report as follows: That Senate Bill No. 28

[illegible]

DO PASS

STATE PUB. CO.

Senator George McCallum. Chairman

MINUTES OF THE LOCAL GOVERNMENT COMMITTEE
March 3, 1981

The Local Government Committee meeting was called to order at 12:30 p.m. by CHAIRMAN VERNER BERTELSEN. The secretary called the roll and found all members present except REPS. GOULD and SALES who were excused and REPS. HURWITZ, MCBRIDE, NEUMAN and WALDRON who were absent. Staff Researcher Lee Heiman also attended the meeting.

SENATE BILL 28

CHAIRMAN BERTELSEN introduced Senator Joe Mazurek, sponsor of SB 28 and he briefly discussed the bill.

SENATOR JOE MAZUREK said this is really a housekeeping bill. It is an act to revise the procedure for declaring an office forfeited by reason of cash shortage found in an audit by the Department of Community Affairs. In 1915 the statute in the bill, where the language is stricken, was passed. It gave the State Examiner authority to conduct audits and verify cash accounts by public officers and it established the procedure for these audits. Basically, the procedure provides for audits and a preliminary report of the audit, and if a cash shortage is found in that officer's account, he is suspended. When it is finalized, the office is forfeited. The statute then says the officer can appeal the forfeiture.

In 1975 the Montana Supreme Court heard a case out of Great Falls called Ryan vs. Norden where a police judge lost his office because of a cash shortage and appealed. The Montana Supreme Court said you can't forfeit a person's office by reason of a cash shortage without having first given notice to that officer when they found the cash shortage and give him an opportunity to at least review the findings and verify the account. Although it was included in the language, it was in language you hear about a lot in due process of law. The report of that case appeared in the old RCM's as an annotation saying that this statute is unconstitutional and you must first give notice to the officer that a cash shortage was found to exist.

When we recodified, that annotation was missed, As a result of that, there have been a couple instances where local governments relied on the old statute and have gone through the process of forfeiting an office. The result of that could be civil liability against the local government entity which relied on the statute, So the purpose of this bill is to bring the statute into conformance with the 1945 Montana Supreme Court decision. This bill provides a means for local government from relying on that unconstitutional statute. We propose an amendment which would set up the following procedure. The audits would still be

conducted and a preliminary audit, and if there is a cash shortage found as a result of that audit, the officer would be suspended from his office. The report would be finalized and within ten days after filing of that final report, notice must be given to the officer setting a hearing to determine the accuracy of the audit. At that hearing the officer will have an opportunity to present any testimony or evidence to verify that the account was correct. If the audit was found to be accurate and there was a cash shortage, he would then lose his office. There was some question in the Senate as to whether that isn't a rather harsh procedure. It is, but it has been on the books since 1915 and the only thing we are doing now that was not done before and which the Supreme Court says we must do, is give notice to that officer before the report becomes final. I have one proponent, Dan Diemert, who drafted the bill. He is the staff attorney from the Department of Community Affairs.

PROPONENTS TO SENATE BILL 28

DAN DIERMERT said he didn't have anything to add in the way of explanation but I will be available for questions in the way of specifics.

DAN MIZNER, Executive Director of the League of Cities and Towns, said they support the bill.

SENATOR MAZUREK closed, He said there was only one thing he failed to mention. The main concern is so a local government would not rely on the old procedure and then incur some civil liability as a result of having done so improperly.

QUESTIONS FROM COMMITTEE MEMBERS:

REP. ANDREASON: I have one question about the word "omission" on page 3 "that the officer suspended is, by act or omission, responsible for the shortage."

SENATOR MAZUREK replied the act would obviously be the act of embezzling money or spending money somewhere it should not have been spent. I believe an omission would be a failure to supervise or control the money, perhaps just not following proper accounting procedures, not keeping track of the clerk who was responsible for the money as opposed to doing something wrong such as failure to perform a duty which was imposed upon him which would be an omission.

REP. ANDREASON stated he wondered how far we could extend that to say that anything could be an omission.

SENATOR MAZUREK said he supposes that if a person is charged with the responsibility of supervising those funds and failed to do so, whether by delegation or some other means, that person who was elected is responsible for those funds. If he fails to take proper supervisory control over them, as the original statute was written, it was intended to impose that possible forfeiture on him.

DAN DIEMERT said the language was not drafted by him. The Council deleted the language he suggested. It was explained to him this is the language now preferred, over what is now antiquated language, when they recited malfeasance in office. This term is to include all the things earlier described by the use of misfeasance and malfeasance of office.

REP. BERTELSEN stated he has a question. Don't you feel that inclusion in here extends the law in any way?

DAN DIEMERT: No, I don't feel it extends the law in any way by broadening the scope of activities which earlier could have given rise to forfeiture of office.

CHAIRMAN BERTELSEN asked if there were any further questions. As there were none, he closed the hearing on Senate Bill 28.

EXECUTIVE SESSION OF SENATE BILL 28

REP. PISTORIA moved that Senate Bill 28 be concurred in.

Staff Researcher HEIMAN said he didn't draft the bill, but he does agree with the person who changed the words. The word "omission" is well used. Particularly when you are talking about an accounting practice. I think they are looking at an accounting practice and whether there was an omission as far as the handling of the funds. I think you'd have problems with vagueness as far as a criminal act that was involved where you needed some kind of intent, but I think with this, with the old malfeasnace type of language, where there is an accounting principle involved, there should be no problem.

REP. ANDREASON: It seems to me that the word "omission" means any time there is a cash shortage the person is automatically in jeopardy and it depends on the governing body whether that person stays or not.

MR. HEIMAN said he thinks that is the whole idea of the bill; to provide a real jeopardy. I think it is meant to be a very harsh bill.

REP. SWITZER: I have no problem with it. I agree with Lee that is what they mean. If there is any omission, you are in trouble.

THE CHAIRMAN asked if we're ready for the question?

QUESTION was called for on the motion that SENATE BILL 28 be concurred in. All said "aye" and the motion carried.

CHAIRMAN BERTELSEN said all bills have been submitted by the Senate and we should not be getting any further bills.

SENATE BILL 69

CHAIRMAN BERTELSEN said this bill would now be introduced by sponsor, Senator Tom Hager.

SENATOR TOM HAGER said this bill was introduced at the request of the County Water District of Billings Heights. It is an act to increase the compensation of members of the Board of Directors of County Water and Sewer Districts. These people have received the same rate of pay since 1967 and that rate was $20 a meeting. They are having a real problem in getting that amount. Frankly, it is tough getting anyone to run for the Board. There are a lot of errands which have to be run for the Board so they want to raise their pay to a monthly salary rather than $20 per meeting. This is enabling legislation that will allow them to raise it to the schedule of $100 if the districts have a population of more than 5,000 persons. The present Boards would have to take board action to raise their pay; this is not automatic. The Senate added an amendment which struck subsection 2 and the reason for that was the question of "what are expenses?" It was discovered that this is covered by another part of law so the reference to subsection 2 was stricken.

SENATOR HAGER said he talked with the people who were responsible for submitting this bill and they were asked to appear as proponents, but as the bill was moved up two days prior to when it was originally scheduled and as there isn't a great deal of money to spend, I hope you will treat this bill kindly.

STANDING COMMITTEE REPORT

March 4, 19 21

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 28

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROCEDURE FOR DECLARING AN OFFICE FORFEITED BY REASON OF CASH SHORTAGE FOUND IN AN AUDIT BY THE DEPARTMENT OF COMMUNITY AFFAIRS; AMENDING SECTION 2-7-511, MCA."

Respectfully report as follows: That SENATE Bill No. 28

BE CONCURRED IN

~~DO PASS~~

Verner L. Bertelsen Chairman.

STATE PUB. CO.
Helena, Mont.